

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



# 74-1012

B  
D4<sup>s</sup>

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

LEON SEGAN,

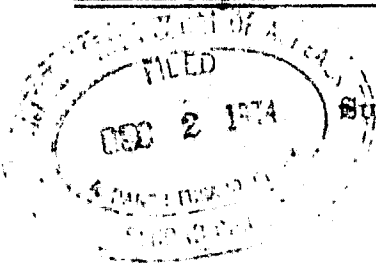
*Plaintiff-Appellant,*

—against—

DREYFUS CORPORATION, *et al.*,

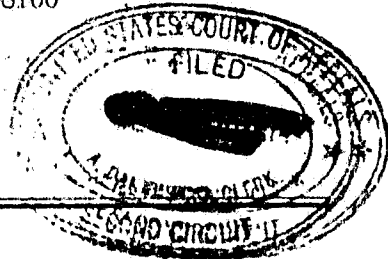
*Defendants-Appellees.*

**BRIEF OF DEFENDANT-APPELLEE  
MARINE MIDLAND BANKS, INC.**



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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

No. 74-1012

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LEON SEGAN,

*Plaintiff-Appellant,*

*—against—*

DREYFUS CORPORATION, *et al.*,

*Defendants-Appellees.*

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**BRIEF OF DEFENDANT-APPELLEE**  
**MARINE MIDLAND BANKS, INC.**

Marine Midland Banks, Inc. is a Delaware corporation and has its principal office at 241 Main Street, Buffalo, New York (9a).<sup>\*</sup> It is one of the two shareholders of defendant Dreyfus Marine Midland Management Corp. (9-10a).

The above two statements constitute *all* of the specific facts alleged in the amended complaint with respect to defendant Marine Midland Banks, Inc. ("Marine Midland"), on whose behalf this brief is submitted.

Yet Marine Midland is charged with generalized and conclusory allegations of fraud without any specification whatsoever or pretense at meeting the requirements of Rule 9(b) of the Rules of Civil Procedure. Even here

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<sup>\*</sup> The Appendix is cited herein as "a".

Marine Midland is merely included in string citations of defendants in an obvious effort to disguise the lack of any factual involvement by Marine Midland itself.

The amended complaint charges that certain of the other defendants engaged in claimed improper activities; only one "example" is even identified (the I.T.T.—Hartford transaction); Marine Midland was involved in none of this. Marine Midland is charged solely because it allegedly had "actual and/or constructive knowledge", and consented, cooperated or assisted in some wholly unidentified way (12a). Marine Midland is also charged with benefiting from the claimed wrongdoing of other defendants (16a). Yet no effort is made to specify what Marine Midland itself did or identify in what manner it could possibly have benefited from the one transaction identified in the complaint, a transaction with which it was in no way involved.

Plaintiff brazenly concedes he has pleaded no more than "ultimate facts" of the "fraud of which he complained" (Pl.'s Br. p. 53), and attempts to justify this violation of Rule 9(b) with two incredible arguments:

(1) Plaintiff argues that he needs "details [*i.e.*, the facts] to frame a complaint" and that the filing of a pleading with "evidentiary details must be delayed until discovery of such details could be obtained." (Pl.'s Br. p. 53) Plaintiff is telling this Court, as he did the District Court, that he cannot now specify the fraud and needs discovery in order to meet the requirements of Rule 9(b). This is precisely what this Court has forbidden in *Segal v. Gordon*, 467 F.2d 602 (1972). The Court there stated:

"A complaint alleging fraud should be filed only if the wrong is reasonably believed to occur; it should

serve to seek redress for a wrong, *not to find one.*" (at pp. 607-08) (emphasis added)

If plaintiff were now given broad discovery to search for evidence to substantiate his generalized allegations, the "pseudo-legal harassment" so properly condemned in *Segal v. Gordon, supra*, would be encouraged and Rule 9(b) undermined.

(2) Quite inconsistently, plaintiff suggests he has the facts but insists on preserving their secrecy. He asserts as the second reason for his failure to comply with Rule 9(b) that his facts are based upon confidential and privileged information which he refuses to disclose (Pl.'s Br. p. 55).

Allegations of "fraud" founded on secret facts is precisely what Rule 9(b) was intended to outlaw. Rule 9(b), as enforced by this Court, mandates that defendants must be protected "from the harm that comes to their reputations or to their goodwill when they are charged with serious wrongdoing", *Segal v. Gordon, supra*, p. 607, and that such charges will not be permitted to stand in the absence of a clear statement "with particularity" of "the circumstances constituting fraud" (Rule 9(b)).

The amended complaint here, particularly insofar as it attempts to involve Marine Midland Banks, Inc. in the alleged events, falls far short of even the minimum requirements of Rule 9(b); and for the reasons set forth above, and those set forth in the comprehensive brief submitted on behalf of defendants-appellees Dreyfus Cor-

poration, *et al.*, the District Court's judgment should be affirmed.

Respectfully submitted,

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